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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Crim. No. 02-30012-1-HO

Plaintiff, ORDER

v.

SHAWN E. BLANKENSHIP,

Defendant.

Defendant filed a motion to vacate, set aside or correct his sentence. The court sentenced defendant on November 26, 2002. Defendant claims that the court violated his Sixth Amendment rights first by enhancing his sentence based on prior convictions and drug quantities not charged in the indictment, and second by sentencing him according to mandatory guidelines. The first claim is barred by the limitations period of 28 U.S.C. § 2255. The second claim fails to state a claim upon which relief may be granted. The holding of the Supreme Court that the federal

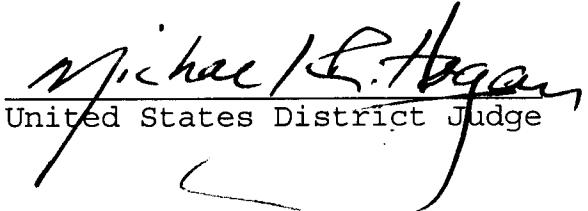
sentencing guidelines are advisory does not apply retroactively to defendant's sentence. United States v. Cruz, 423 F.3d 1119, 1121 (9th Cir. 2005).

Conclusion

Based on the foregoing, defendant's motion to vacate, set aside or correct sentence [#50] is denied.

IT IS SO ORDERED.

DATED this 14th day of July, 2006.



United States District Judge